

06-18-2004

Form PTO-1594
(Rev. 10/02)
OMB No. 0651-0027 (exp. 6/30/2005)
Tab settings $\Rightarrow \Rightarrow \Rightarrow$

REC

1



102769680

J.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Agway, Inc.

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation-State
☐ Other _____

Additional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☒ Other Bankruptcy Court Order

Execution Date: 9-30-03

2. Name and address of receiving party(ies)

Name: CY Farms, LLC

Internal

Address: _____

Street Address: 6460 Transit Road

City: Elba State: NY Zip: 14508

- ☐ Individual(s) citizenship _____
☐ Association _____
☐ General Partnership _____
☐ Limited Partnership _____
☐ Corporation-State _____
☒ Other Limited Liability Company

If assignee is not domiciled in the United States, a domestic
 representative designation is attached: ☐ Yes ☐ No
 (Designations must be a separate document from assignment)
 Additional name(s) & address(es) attached? ☐ Yes ☐ No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) 75816515

B. Trademark Registration No.(s) 2663731

Additional number(s) attached ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Leslie W. Kernan, Jr., Esq.

Internal Address: _____

Lacy, Katzen, Ryen & Mittleman, LLP

Street Address: 130 East Main Street

City: Rochester State: NY Zip: 14604

6. Total number of applications and registrations involved: _____

1

7. Total fee (37 CFR 3.41).....\$ 40.00

- ☒ Enclosed
☐ Authorized to be charged to deposit account

8. Deposit account number: _____

DO NOT USE THIS SPACE

9. Signature.

Leslie W. Kernan, Jr., Esq.

Name of Person Signing
 00000008 75816515

Signature

May 20, 2004

Date

Total number of pages including cover sheet, attachments, and document: 11

06/17/2004 DBYRNE

01 FC:8521

40.00

documents to be recorded with required cover sheet information to:
 Commissioner of Patent & Trademarks, Box Assignments
 Washington, D.C. 20231

TRADEMARK
 REEL: 002992 FRAME: 0411

FILED

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK**

In re Agway, Inc.,

Debtor.

In re Agway General Agency, Inc.,

Debtor.

In re Brubaker Agronomic Consulting Service LLC,

Debtor.

In re Country Best Adams, LLC,

Debtor.

In re Country Best-DeBerry LLC,

Debtor.

In re Feed Commodities International LLC,

Debtor.

2003 OCT -1 PM 3:23

CLERK OF THE
BANKRUPTCY COURT
N.D. OF N.Y.
UTICA

Chapter 11

Case No. 02-65872 through

Case No. 02-65877

Jointly Administered

RECEIVED

SEP 30 2003

OFFICE OF THE BANKRUPTCY JUDGE
UTICA, NY

**ORDER (A) APPROVING THE SALE OF AGWAY'S INTEREST IN THE
ELBA, NEW YORK TSPF HEIFER FARM, (B) AUTHORIZING
AGWAY TO ASSUME AND ASSIGN CERTAIN
EXECUTORY CONTRACTS, AND (C) GRANTING RELATED RELIEF**

Upon the motion (the "Sale Motion") of Agway, Inc., as debtor and debtor in possession ("Agway" or the "Debtor") for an order, *inter alia*, (i) approving, pursuant to sections 105(a) and 363 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), an asset sale agreement by and among CY Farms, LLC ("CY Farms") and Agway, to be effective upon a closing of the ASA¹, and (ii) other relief related to the foregoing; and the Court having

¹ Capitalized terms not otherwise defined herein have the meaning given to them in the Sale Motion.

held a hearing on September 30, 2003, to approve the relief requested in the Sale Motion (the "Sale Hearing"); and it appearing that notice of the Sale Hearing has been provided to (i) United States Trustee for the Northern District of New York, (ii) the attorneys for the Debtors' prepetition lenders and postpetition lenders, (iii) the attorneys for the official unsecured creditors' committee, (iv) David MacKnight, Esq., Lacy, Katzen, Ryen & Mittleman, LLP, counsel for CY Farms, (v) Nicholas S. Priore, Esq., Getnick Livingston Atkinson Gigliotti & Priore, LLP, 258 Genesee Street, Suite 401, Utica, NY 13502, counsel for ACE Insurance, (vi) David L. Ganje, Esq., Ganje Law Office, Two Tower Place, Albany, NY 12203, counsel for CitiCapital Commercial Corporation f/k/a Associates Commercial Corporation, (vii) David L. Rasmussen, Esq., Harris Beach LLP, 99 Garnsey Road, Pittsford, NY 14534, counsel for Zurich North America, (viii) Roger Reiersen, Esq., Office of the General Counsel, 1200 K Street, N.W., Suite 340, Washington, DC 20005, counsel for Pension Benefit Guaranty Corporation, (ix) all counterparties to the Assigned Agreements, (x) and the Securities and Exchange Commission, the Internal Revenue Service, and other government agencies to the extent required by the Bankruptcy Rules and the Local Bankruptcy Rules for the Northern District of New York; and it appearing that such notice constitutes good and sufficient notice of the Sale Motion and Sale Hearing and that no other or further notice need be provided; and upon the Sale Motion and the record of the Sale Hearing and all other proceedings had before the Court; and it appearing that an order approving the Sale Motion and ASA is in the best interests of Agway and all parties in interest; and it appearing that the Court has jurisdiction over this matter; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The statutory predicates for the relief sought in the Motion are sections 105(a), 363(b), (f), (m), (n) and 365(f) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014.

B. Proper, timely, adequate and sufficient notice of the Sale Motion and the proposed sale set forth herein (the "Sale") has been provided in accordance with sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 2002(i), 6004 and 9014, in compliance with the Order, dated December 26, 2002, Modifying The Order Establishing Notice Procedures, dated October 1, 2002, such notice was good and sufficient, and appropriate under the particular circumstances, and no other or further notice of the Sale Motion or the Sale Hearing is or shall be required.

C. As demonstrated by the pleadings, approval of the Sale Motion and Sale by private sale, without the requirement of publication or marketing the Assets is appropriate due to the nature of the Debtor's interest in Heifer Facility and the practical restrictions on transfer imposed by the Lease.

D. No consents or approvals, other than those expressly provided for in the ASA or expressly set forth herein, are required for the Debtor CY Farms to consummate such transaction(s).

E. Approval of the ASA and consummation of the Sale at this time are in the best interests of the Debtor, its creditors and its estate.

F. The Debtor has demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for approval of the Sale Motion and

the Sale pursuant to sections 363(b) and 365(f) of the Bankruptcy Code prior to, and outside of, a plan of reorganization.

G. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities.

H. The ASA was negotiated, proposed and entered into by the Debtor and CY Farms without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtor, nor CY Farms has engaged in any conduct that would cause or permit the ASA to be avoided under section 363(n) of the Bankruptcy Code.

J. CY Farms is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. CY Farms will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the ASA at all times after the entry of this Order.

K. The offer for the Assets by CY Farms (i) is fair and reasonable, and (ii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

L. The transfer of the Assets to CY Farms will be a legal, valid, and effective transfer of the Assets, and will vest CY Farms with all right, title, and interest of in the Assets free and clear of all liens, claims, encumbrances and interests which have, or could have, been asserted by the Debtors or their creditors in connection with the Debtor's chapter 11 case.

M. CY Farms will not assume any liabilities of the Debtors other than those set forth in the ASA.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED THAT:**

1. The Sale Motion shall be, and hereby is, GRANTED as set forth herein.

Approval of the ASA

2. The ASA between the Debtor and CY Farms and all of the terms and conditions thereof, are hereby approved.

3. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor and CY Farms are authorized and directed to consummate the ASA.

4. The Debtor and CY Farms are each authorized and directed to execute and deliver, and empowered to perform under, consummate and implement the ASA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the ASA, and to take all further actions as may be reasonably requested by the other as may be necessary or appropriate to the performance of the obligations as contemplated by the ASA.

Transfer of the Assets

5. Pursuant to sections 105(a), 363(f) and 365(f) of the Bankruptcy Code, the Assets shall be transferred to the CY Farms pursuant to the ASA and upon consummation of the ASA (the "Closing") and shall be, free and clear of all liens, claims, encumbrances and interests which have, or could have, been asserted by the Debtors or their creditors in connection with the Debtor's chapter 11 case, if any, with all such liens, claims, encumbrances and interests of any kind or nature whatsoever to attach to the net proceeds that Agway ultimately realizes from the Sale in the order of their priority, with the same validity, force and effect which they now have as

against the Assets, subject to any claims and defenses the Debtor may possess with respect thereto.

6. The transfer of the Assets to CY Farms pursuant to the ASA constitutes a legal, valid, and effective transfer of the Assets, and shall vest CY Farms with all right, title and interest in and to the Assets free and clear of all liens, claims, encumbrances, and interests which have, or could have, been asserted by the Debtors or their creditors in connection with the Debtor's chapter 11 case.

Assumption and Assignment of Contracts to CY Farms

7. Pursuant to 11 U.S.C. §§ 105(a) and 365, and subject to and conditioned upon the Closing of the Sale, the Debtor's assumption and assignment to CY Farms, and CY Farms' assumption on the terms set forth in the ASA, of the Contracts is hereby approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

8. The Debtor is hereby authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code to (a) assume and assign to CY Farms effective upon the Closing of the Sale, the Contracts free and clear of all liens, claims and encumbrances as well as all interests of any kind or nature whatsoever, and (b) execute and deliver to CY Farms such documents or other instruments as may be necessary to assign and transfer the Contracts to CY Farms.

9. The Contracts shall be transferred to, and remain in full force and effect for the benefit of, CY Farms in accordance with their respective terms, notwithstanding any provision in any such Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and,

pursuant to section 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to the Contract after such assignment to and assumption by CY Farms.

10. All defaults or other obligations of the Debtor under the Contracts arising or accruing prior to the Petition Date (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) are deemed cured by the Debtor and the cure amounts with respect to each Contract are those amounts (the "Cure Amounts") set forth in the Sale Motion.

11. With the exception of the amounts set forth in the Sale Motion, except as otherwise set forth herein, each nondebtor party to a Contract hereby is forever barred, estopped, and permanently enjoined from asserting against the Debtor or CY Farms, or the property of any of them, any default existing under the Contract as of the date of the Sale Hearing; or, against CY Farms, any counterclaim, defense, setoff or any other claim under the Contracts asserted or assertable against the Debtors.

Additional Provisions

12. On the Closing date, each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its interest in the Assets, if any, as such interests may have been recorded or may otherwise exist.

13. Regardless of whether the Debtor's creditors execute the releases set forth in the above paragraph, this Order (a) shall be effective as a determination that, on the Closing date, all liens, claims, security interests and interests of any kind or nature whatsoever existing with respect to the Debtor and the Assets prior to the closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including without limitation, all

filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets.

14. Each and every federal, state, and local governmental agency or department is hereby directed to accept for filing and/or recording any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the ASA.

15. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing claims or interests with respect to the Debtor or the Assets shall not have delivered to the Debtor prior to the Closing date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the person or entity has with respect to the Debtor or the Assets or otherwise, then (a) the Debtor is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets and (b) CY Farms is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all claims and interests in the Assets of any kind or nature whatsoever.

16. Pursuant to sections 105(a) and 1146(c) of the Bankruptcy Code, the transfer of the Assets is not subject to taxation under any federal, state, local, municipal or other law imposing or purporting to impose a stamp, transfer, recording, sale or any other similar tax on

any of the Debtor's transfers or conveyances of the Assets, which includes real estate, personal property, and any other assets.

17. All entities who are presently, or on the Closing date may be, in possession of some or all of the Assets are hereby directed to surrender possession of the Assets to CY Farms on the Closing date.

18. The net proceeds of the sale of the Assets shall be paid to General Electric Capital Corporation ("GECC"), as Agent for certain lenders signatory to that certain Senior Secured, Super-Priority Debtor-In-Possession Credit Agreement, dated as of October 4, 2002 (the "DIP Loan Agreement").² The foregoing payment to GECC by Agway is subject to the rights of the Committee under the Final Order Approving The Debtors' Emergency Motion For Order Authorizing The Debtors To Incur Post-Petition Senior Secured, Super-Priority Indebtedness, dated October 22, 2002.

19. This Court retains jurisdiction to enforce and implement the terms and provisions of the ASA, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects.

20. The transaction contemplated by the ASA is undertaken by CY Farms in good faith, as that term is used in section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein shall not affect the validity of the Sale to CY Farms, unless such authorization is duly stayed pending such appeal. CY Farms is a purchaser in good faith of the Assets, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

² Pursuant to ¶ 1.3(b)(ii) of the DIP Loan Agreement, Agway is required to remit the proceeds from the sales of any assets to GECC, as Agent.

21. The terms and provisions of the ASA and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, and its creditors, CY Farms, and their respective affiliates, successors and assigns, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions shall likewise be binding.

22. Upon Closing of the transactions contemplated in the ASA, the Agreement and Lease shall be deemed terminated by consent of the Debtor and CY Farms, and each of the Debtor and CY Farms shall thereupon be deemed to have waived any claim against the other in any way relating to the Agreement and/or Lease.

23. The failure specifically to include any particular provision of the ASA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the ASA be authorized and approved in its entirety.

24. The ASA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

25. Notwithstanding the provisions of Bankruptcy Rules 6004(g) and 6006(d), there is no stay pursuant to Bankruptcy Rule 6004(g) and this Order shall be effective and enforceable immediately upon entry.

Dated: Utica, New York
September 30th, 2003

I certify that this is a true copy.

Attest: Richard H. Zeh, Jr.
Clerk of Court

By: Deputy Clerk
Deputy Clerk

Date: 10/06/03

HONORABLE STEPHEN D. GERLING
CHIEF UNITED STATES BANKRUPTCY JUDGE